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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/163511

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: DDB file

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On November 6, 2014, the Petitioner filed an application for Medicaid benefits, indicating that she had become disabled by chronic pain. (DDB file, Testimony of the Petitioner)
3. On December 22, 2014, the Disability Determination Bureau (DDB) denied the Petitioner's application for Medicaid benefits. (DDB file, Testimony of the Petitioner)

4. The Petitioner filed for reconsideration of the Medicaid application on January 14, 2015. (DDB file, Testimony of the Petitioner)
5. On January 22, 2015, the DDB again denied the Petitioner's Medicaid application and on January 27, 2015, the DDB forwarded the Petitioner's file to the Division of Hearings and Appeals for review. (DDB file, Testimony of the Petitioner)
6. On October 22, 2014, the Petitioner filed an application for Title II, Social Security Disability Income (SSDI). The Petitioner indicated that she had become disabled by diverticulitis, nerve damage, hypertension and chronic pain. (DDB file, Testimony of the Petitioner)
7. On December 18, 2014, the Social Security Administration (SSA) denied the Petitioner's application for SSDI. (DDB file, Testimony of the Petitioner)
8. The Petitioner has since been diagnosed with a hernia on her left side and an ovarian cyst on her right side, but she has not filed for reconsideration her SSDI application. (Testimony of the Petitioner)

### **DISCUSSION**

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
  - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

In the case at hand, the Petitioner applied for both Medicaid benefits and for SSDI benefits, stating she had become disabled by chronic pain. The SSA denied the Petitioner's application within 12 months of her Medicaid application. Although the Petitioner's condition might have changed since the SSA denied the SSDI application, she has not applied for reconsideration of the SSDI denial. As such, there has been no refusal by the SSA to consider these changes in condition. Consequently, the SSA determination that the Petitioner is not legally disabled is binding upon the Division of Hearings and Appeals.

The DDB correctly denied the Petitioner's application for Medicaid benefits.

### CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of February, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 13, 2015.

Milwaukee Enrollment Services  
Disability Determination Bureau